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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. [redacted] 77

CARVER PROGRESSIVE CLUB,
A Michigan Non-Profit Corporation, individually, and
for all its members as a class,
Petitioner,

vs.

LOUIS C. MIRIANI,
Mayor of the City of Detroit, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
For the Sixth Circuit.

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(a) OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Sixth Judicial Circuit has not been yet officially published, but is filed with Carl Reuss, Clerk of the Sixth Circuit Court of Appeals, in Docket No. 14297.

Petitioner has been informed by the United States District Court that the opinion in Cause No. 20061—Civil, was not forwarded to the West Publishing Co. for printing until April 10, 1961, and as a consequence the official report citation is not yet available. The District Court opinion, rendered June 2, 1960, has been filed with the Clerk of the United States District Court for the Eastern District of Michigan in its Civil Cause No. 20061.

(b) JURISDICTION.

The within petition requests review of an order of the United States Court of Appeals for the Sixth Judicial Circuit, affirming the dismissal by the United States District Court for the Eastern District of Michigan, of petitioner's complaint for injunctive relief and damages under the Federal Civil Rights Acts. The Order of the Court of Appeals was made and entered on February 17, 1961.

No order for rehearing has been entered, and no extension respecting the within petition for review by certiorari has been sought.

Jurisdiction to review the judgment of dismissal heretofore entered by the Sixth Circuit Court of Appeals below is found in Title 42 U. S. C., Section 1984, Mar. 1, 1875, c. 114, Sec. 5, 18 Stat. 337, which reads as follows:

> "*All cases* arising under the provisions of this Act (Civil Rights Acts) in the Courts of the United States, *shall* be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said Court,"

insofar as the petitioner seeks to review the dismissal of a suit brought under Section 1343 of Title 28 U. S. C.

And jurisdiction to review the aforesaid judgment and order also rests under the provisions of Title 28 U. S. C., Section 1254, Subsection (1), June 25, 1948, c. 646, 62 Stat. 928, which reads as follows:

> "Cases in the Courts of Appeals may be reviewed by the Supreme Court of the United States by the following methods: (1) By Writ of Certiorari granted upon

petition of any party to a civil or criminal case, before or after rendition of judgment or decree,"

insofar as the petitioner seeks to review a final judgment of the United States Court of Appeals for the Sixth Judicial Circuit.

(c) QUESTIONS PRESENTED.

(a) WHETHER a United States District Court, having Civil Rights Jurisdiction as defined by Sections 1981, 1982, 1983, and 1985 of Title 42 U. S. C. and general federal question jurisdiction as defined by Section 1331 of Title 28 U. S. C., must entertain a complaint, or may dismiss it upon a claim of *absence of jurisdiction*, where the plaintiff, representing three hundred (300) small business and property owners, as a class, complained in its complaint that the City of Detroit and certain of its responsible officers, have conspired and wickedly planned and acted to dispossess those of its class of their property and businesses without sanction or authority of law, by proceeding to put into effect a fraudulent Urban Renewal Plan, under circumstances where the lands included within the Municipality's plan were not characterized by blight or obsolescence as required by pertinent provisions of the United States Housing Act of 1949, as amended, and particularly by Section 1460 of Title 42 U. S. C., and where the complaint further alleged that the Municipal authority had fraudulently and illegally applied for federal funds to enable it to take non-slum lands, where no adequate relocation plan for the business to be taken, and people to be displaced, existed, as required by Section 1455(c) of Title 42 U. S. C., and where the complaint further alleged that

the taking of the lands of the members of its class, and the interference with their enjoyment thereof, was, under all of the circumstances, in derogation and disregard of rights guaranteed and secured said class members by the Constitution and Laws of the United States, and where the prayer of the complaint was to permanently enjoin such interference and to procure money damages for the wrongs done thus far.

(b) WHETHER, in the absence of any pending litigation in any Court of the United States, or in any State Court, in a State where the only possibility of future proceedings to take complainants' land was by Eminent Domain, before a non-judicial tribunal, plaintiff, which seeks to enforce for itself and for three hundred (300) others of its class similarly situated, rights guaranteed it, and them, by the Laws, Statutes, and Constitution of the United States, can be denied the present right to seek injunctive relief against the deprivation or diminution of those rights by a Municipal Corporation, and money damages for past wrongs, in a United States District Court, upon the theory that the Federal and Constitutional rights sought to be protected against invasion may be inquired into in State Proceedings at Eminent Domain to be instituted at some future date, where the highest Court of the State affected has declared that proceedings within such State at Eminent Domain were non-judicial proceedings, and has declared such condemnation tribunals to have no right whatever to adjudicate Constitutional questions or to pass upon and interpret Federal Statutes, or to award special damages, and where that Court has declared the jurors sitting in such tribunals to be the sole judges of both the law and the facts before them, and has limited the right of appeal and review solely to the questions of the 'necessity' and the 'amount awarded' for the taking.

(d) CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The following Constitutional and Statutory Sections are involved in the consideration of the within application for Certiorari:

Article V, of the Amendments, to the Constitution of the United States;
Article XIV, of the Amendments, to the United States Constitution;
Article VII, Section 1, of the Constitution of 1908 of Michigan;
Title 28 U. S. C., Section 1331;
Title 28 U. S. C., Section 1343;
Title 28 U. S. C., Section 1254;
Title 42 U. S. C., Section 1981, R. S. Section 1977;
Title 42 U. S. C., Section 1982, R. S. Section 1978;
Title 42 U. S. C., Section 1983, R. S. Section 1979;
Title 42 U. S. C., Section 1984, Mar. 1, 1875, c. 114, 18 Stat. 337;
Title 42 U. S. C., Section 1985(3), R. S. Section 1980;
Title 42 U. S. C. Section 1451(c);
Title 42 U. S. C., Section 1452 (a) (d);
Title 42 U. S. C., Section 1460 (a) (c);
Title 42 U. S. C., Section 1455 (c) (d).

The above sections are set forth in pertinent detail in Appendix 'A' hereinafter following.

(e) STATEMENT OF FACTS.

Appellant, Carver Progressive Club, is a Michigan Non-profit Corporation, whose members are some three hundred resident property and business persons, all owning lands within the City of Detroit, Michigan, as hereinafter more fully set forth. All of the members of said Club are citizens of the United States.

As a matter of background, forty years or so ago, a small number of Negroes moved into the extreme north-

ernmost portion of the City of Detroit, into lands which were then mainly rural and unpopulated. As time passed, population increases brought about a situation where some forty nine hundred (4900) Negroes lived in approximately twelve hundred (1200) medium cost structures in an area of roughly sixteen by four city blocks, bounded on the extreme north by an eight lane dual highway, constituting the City limits line, and on all other sides by high and medium class white residential communities.

Unlike anywhere else in the City of Detroit, Negroes had approximately five City blocks of small businesses, owned and operated by them, fronting on a large desirable dual highway.

Throughout the years the City of Detroit has attacked this small community, and attempted to dispossess its occupants from the land. Fourteen years ago, an attempt was made to take the same lands by legal device, but it was repelled by the same people who now make up the Appellant Carver Progressive Club. *In Re Acquisition of Land, Appeal of Card,* reported at 319 Mich. 212, 29 N. W. 2d 146, reflects that experience. Other more sophisticated methods to take the land have been tried since that time with no success.

With the enactment of Federal Urban Renewal Laws, the City of Detroit began in earnest to attempt to take the properties; and, as might have been anticipated, the City of Detroit, and its planners, created an Urban Renewal Plan, which they entitled Mich. R-19, to exactly deal with the whole area in which the Negroes on the Eight Mile Rd. boundary were residing. The project area was so drawn as to include within its boundaries every single Negro family within the Eight Mile Rd. Area.

Members of the Carver Progressive Club vigorously protested the implementation of the plan, to the City Plan

Commission, and its agents, and remonstrated before the Detroit City Council, pointing out to the Council, sitting as the governing body of the City of Detroit, acting under provisions of Sections 1452 and 1455 of Title 42 U. S. C. (See Appendix 'A'), that the lands affected were not characterized by blight and obsolescence, were not slum lands, and were suitable to provide healthy, wholesome, and adequate living environment for family. In addition the appellants pointed out that most of the homes in the area were less than fifteen (15) years of age, and cost on the average of $12,000.00 to $15,000.00.

But notwithstanding these protests, and the actual condition of the lands included within the project boundaries, the City of Detroit, through its City Council, passed a resolution adopting the Plan, Mich. R-10, which plan asserted that more than 82% of the total dwellings within the project area were substandard and characterized by blight.

Thereafter, the City of Detroit applied for Urban Renewal funds for planning and acquisition of the residents' lands, and began freezing building permits, and denying the owners within the land the right to modify, improve, alter, and appreciate their properties.

Finally the City set up a local project office within the area affected, so as to facilitate the acquisition of properties, and it was then that the plaintiffs filed their bill of complaint in the United States District Court for the Eastern District of Michigan, Southern Division, under the Federal Civil Rights Act, for injunctive relief and money damages.

The suit was filed by the plaintiff, for itself and for all its members, as a class, and alleged that jurisdiction lay under the Civil Rights Acts insofar as there existed a conspiracy and plan by the Mayor, City Councilmen, City Planners and others to take the lands and businesses of

some 300 citizens illegally and in disregard of their Constitutional rights, using the Federal Urban Renewal Laws as the vehicle for the accomplishment of this nefarious purpose. (pp. 2a, 3a, 8a of Certified Record.) The plaintiffs asked for injunctive relief against the further implementation of the Plan Mich. R-19, as well as money damages for the wrongs caused by the City to be inflicted upon the land owners to date. (pp. 20a, 21a of Certified Record.)

The Complaint was filed in the United States District Court at Detroit, Michigan, on April 25, 1960 (p. 1a of Certified Record) and an Order to Show Cause was issued simultaneously with its filing by the Hon. Thomas P. Thornton, United States District Court Judge, requiring them to show cause, if any cause there was, why an injunction should not issue as prayed for. (pp. 22a, 23a of Certified Record.)

On March 17, 1960, the defendants filed a Motion to Dismiss (p. 24a of Certified Record) and noticed it on for hearing on May 23, 1960. The motion claimed that plaintiffs' bill of complaint should be dismissed because the plaintiffs had failed to exhaust their administrative remedies, and because the bill did not state a cause of action upon which relief could be granted.

On May 23, 1960, the defendants' motion was heard, and taken under advisement, by the Court. (pp. 24a to 49a of Certified Record.)

On June 2, 1960, the District Court filed its opinion, in which it denied that it had jurisdiction to entertain plaintiffs' complaint, and, in which it asserted, among other things:

> "this suit is prematurely brought as the property cannot be taken other than through condemnation proceedings of the State of Michigan, which provide for the presenting of all defenses." (pp. 50a to 52a Certified Record.)

On June 27, 1960, the District Court entered an order of Dismissal of plaintiffs' complaint, cutting off plaintiffs' right to present legal argument on the applicable law. (pp. 55a to 58a Certified Record.)

On June 29, 1960, Plaintiffs filed their claim of appeal to the United States Court of Appeals for the Sixth Judicial Circuit. (p. 59a of Certified Record.)

Thereafter, following perfection of the said appeal, while plaintiffs' attorney, Milton R. Henry, was out of the Country, in Africa, the case was called for argument, and argued in the absence of Counsel.

On the Seventeenth Day of February, 1961, the Court of Appeals affirmed the decision and judgment of the United States District Court in the following language:

> "The above cause coming on to be heard upon the record, the briefs of the parties, and the argument in open court of counsel for appellees, and the court being duly advised,
>
> Now, therefore, it is ordered, adjudged and decreed that the judgment of the District Court be and is hereby affirmed on the opinion of Judge Thornton.
>
> Approved for entry:
>
> THOMAS F. MCALLISTER,
>
> *United States Circuit Judge.*"

This order was filed on February 17, 1961. It is from this judgment that Certiorari is hereby sought.

Jurisdiction in the District Court in the first instance was invoked under the provisions of Sections 1331 and 1343 of Title 28 U. S. C., insofar as the suit involved an interpretation of authorities under the Housing Act of 1949, as amended, being Sections 1450 to 1460 of Title 42 U. S. C., commonly known as the Urban Renewal Laws, and insofar as the plaintiffs claimed that authorities granted the

City of Detroit by these laws were being misappropriated and misused to dispossess them from their lands in disregard of their Constitutional rights. Section 1343 of Title 28 U. S. C. was invoked because the plaintiffs alleged the existence of a conspiracy to use Federal Urban Renewal Laws to interfere with their possession and enjoyment of their property contrary to the requirements of the Constitution of the United States.

(f) REASONS FOR ALLOWANCE OF THE WRIT OF CERTIORARI.

(i) The Writ should be granted in order that an important procedural conflict between the decisions of the 2nd Circuit Court of Appeals and the Sixth Circuit Court of Appeals be resolved.

In the within cause, the Sixth Circuit Court of Appeals dismissed the petitioner's complaint stating:

> "We might state here, parenthetically that this suit is prematurely brought as the property cannot be taken other than through condemnation procedures of the State of Michigan, *which provide for the presenting of all defenses.* * * * It is therefore clearly stated the plaintiffs are not within their remedies. * * *" (Italics added.)

In *Burt v. City of New York*, C. A. 2nd, June 26, 1946, 156 F. 2d 791, the Plaintiff, an architect, filed an action, as here, under provisions of former Title 28 U. S. C., being then Section 41(14), but now being Section 1343(3) of Title 28 U. S. C., for injunctive relief and damages occasioned by the wrongful acts of certain New York City Officials in denying him the issuance of permits he felt entitled to. It was claimed there upon the City's Motion to Dismiss that the plaintiff's bill of complaint would not lie because of the availability to the plaintiff of both an ad-

ministrative and a judicial remedy against the wrong alleged.

Justice Learned Hand, in deciding the *Burt* case, acknowledged it to be true that Burt had both an administrative remedy and a judicial remedy by certiorari to the Supreme Court of New York (note 2, p. 792) but he held for the entire Court that the existence of either or both of such remedies would not justify dismissal of a complaint filed under Title 28 U. S. C., Section 41(14), where damages were sought as well as injunctive relief.

Inasmuch as the complaint in the within cause was filed under precisely the same section as that under which the *Burt* case was decided, and the allegations of the complaint in the instant case parallel those in the *Burt* case in substance, a conflict between the opinions of the sixth and second circuit exists on this fundamental point which should be resolved.

This petitioner believes the rationale of the *Burt* case to be correct, and believes that the *Burt* case properly states the law of this land to the effect that the existence of other remedies cannot justify the dismissal of a complaint filed under the Federal Civil Rights Acts.

In *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 40, 29 S. Ct. 192, 53 L. Ed., 382 (1909) it is quoted:

> "When a Federal Court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction (*Cohens v. Virginia*, 6 Wheat. 264, 404), and in taking it that Court cannot be truthfully spoken of as precipitate in its conduct. That the case may be one of local interest only is entirely immaterial so long as the parties are citizens of different States or a question is involved which by law brings the case within the jurisdiction of a Federal Court. The right of a party plaintiff to choose a Federal Court where there is a choice cannot be properly denied."

For a period of more than fourteen years, since the announcement of the decision in the *Burt* case, no case has arisen in which a plaintiff was denied the right to prosecute his claims because of the existence of an administrative remedy in a State tribunal, and the matter is of such importance to the uniform functioning of the Federal judiciary that Certiorari ought to be granted to clearly outline, if any, the limits which exist upon resort to the Federal Civil Rights Statutes.

(ii) The Writ should be granted because there is here involved a direct conflict between the decision of the Court of Appeals for the Sixth Circuit, and the clear rulings of the Supreme Court of the State of Michigan, and a misconstruction of those rulings to arrive at a reason for dismissing petitioners' bill of complaint.

In dismissing the petitioners' complaint, the Court of Appeals stated:

> "The property cannot be taken other than through condemnation procedures of the State of Michigan, *which provide for presenting of all defenses.*"

This portion of the decision misconstrues all of the unvarying decisions of the Supreme Court of the State of Michigan, relative to condemnation proceedings in Michigan, and categorically urges as fact two things which do not exist in Michigan as a matter of law:

> *First*—that Michigan Condemnation Tribunals are judicial bodies.
>
> *Secondly*—that they have chancery powers or authority to pass upon and decide questions of Federal Constitutional Law.

As to proposition No. 1, the unvarying rule of the Michigan cases has been that Michigan Condemnation tribunals are not judicial bodies, are not "Courts," but that they are bodies created to hold 'inquests' into necessity

and the amount of compensation to be paid for a taking of land.

In Re Widening of Bagley Ave., 248 Mich. 1, 273 N. W. 798 (1937);

In re Acquisition of Civic Center, 335 Mich. 582, 591, 56 N. W. 2d 387 (1953).

Further, the Supreme Court of the State of Michigan has repeatedly held, without deviation, that condemnation 'jurors' are the sole judges of both the law and the facts, and that their findings are only reviewable to determine whether an award made was within maximum limits of testimony as to value.

In Re Huron-Clinton Metropolitan Authority's Petition as to Bellevue Lake Park Project, 306 Mich. 373, 387, 10 N. W. 2d 920, 926, note 8.

Cf. also:

Toledo, Ann Arbor & Gr. Trunk Ry. Co. v. Dunlap, 47 Mich. 456;

In Re Owen & Memorial Park in City of Detroit, 244 Mich. 377, 221 N. W. 279, 61 A. L. R. 190;

Edw. J. Jeffries Homes Housing Project, 306 Mich. 638, 11 N. W. 2d 272 (1943);

St. Clair Shores v. Conley, 350 Mich. 458, 86 N. W. 2d 271 (1950).

Moreover, it has been unvaryingly held that, irrespective of whether a justice of the Peace or Circuit Judge presides over the hearing, such officer is no part of the body, but sits merely to start the condemnation proceedings in motion. His instructions are not binding and may be disregarded.

Village of Paw Paw v. Flook, 214 Mich. 486, 487, 183 N. W. 13 (1921) (Justice of the Peace sitting);

Detroit v. Fidelity Realty Co., 213 Mich. 448, 453, 182 N. W. 140 (1921) (Circuit Judge sitting);
Board of Education v. Getz, 321 Mich. 676, 679, 33 N. W. 2d 113 (1948).

Further, the unvarying tenor of decisions of the Michigan Supreme Court has been that only 'Judicial' bodies may lawfully pass upon questions of State or Federal Constitutional Law.

In *Ortman v. Greenman*, 4 Mich. 291 (1856) it was even denied that Justices of the Peace, who are judicial officers, constitutionally created, could pass upon the constitutionality of Acts of the State Legislature.

In *In Re Manufacturer's Freight*, 294 Mich. 56, 66, 292 N. W. 678, 681 (1940), the limitation is fully discussed. The Michigan Supreme Court makes it emphatic that any attempt to compel non judicial bodies to pass upon Constitutional questions would be violative of the Michigan Constitution.

Cf. *McClintock v. Laing et al.*, 19 Mich. 300, 304 (1869);
Allen v. Bd. of Auditors, 122 Mich. 324, 329, 81 N. W. 113, 114 (1899).

Judicial questions must, in Michigan, be disposed of judicially, by "judicial bodies,"

Shumway v. Bennett, 29 Mich. 451, 462 (1874),

and the requirements of the Michigan Constitution exclude every other mode of choice.

Further, Michigan Condemnation 'Courts' have no power to award punitive or exemplary damages.

Grand Rapids L. & D. R. Co., v. Cheesebro, 74 Mich. 466, 42 N. W. 661 (1889).

From the above recitation of Michigan cases, it is clear that Michigan condemnation proceedings do not "provide for the presenting of all defenses," and that the Court of Appeals for the Sixth Circuit misapplied the substantive law of the State of Michigan, or misconstrued or refused to apply the applicable decisions of the Supreme Court of the State of Michigan on an important Federal Question, namely, whether the inferior tribunal alluded to has the power to remedy and redress the deprivation of petitioners' constitutional rights under the Federal Constitution.

Federal due process demands that these litigants be able to challenge the infringements upon their Federal Constitutional rights in some *judicial* tribunal; but, unless the decision below of the United States Court of Appeals be reviewed by certiorari, they will have been made to suffer summary ejectment from the United States Courts and have available to them no tribunal competent to hear and determine their claims.

Simply stated, the Federal Constitution says that the petitioners' property *shall not* be taken without due process of law, and the Federal Statutes say that the petitioners *shall* have the *same* right to lease, sell, hold, and convey property as white people, and that they *shall* have the *same* right in every State to *sue* as white people to the equal protection of the laws.

But, if these petitioners are denied certiorari, all of the Constitutional and Statutory provisions above referred to become meaningless and empty, not alone for them, but for countless thousands, who, as citizens rely upon their government, as parens patriae, to protect their right to petition the Courts for redress of grievances.

Insofar as Michigan Condemnation tribunals are not "Courts," or "judicial" bodies, and cannot be compelled

under Michigan law to entertain or decide questions of Constitutional law, to accept or be bound by instructions of Court as to any law, to grant damages of a punitive or exemplary nature for wilful trespass, to punish conspiracies to take land under guise of law, to allow injunctive or other equitable relief, or to require conformity by the condemnor with Constitutional or Federal law, and insofar as their rulings are not subject to appeal or general review, certiorari should be granted the petitioners in order that full effect be given to the cardinal rule that Federal Courts are bound to accurately apply the decisions of the highest Court of a State upon matters of construction of State law and proceedings.

It is important to note that while there might be some justification for denying parties-litigant access to a Federal Court when comparable State Court proceedings exist to permit adequate, complete, and similar review of a claim, there is certainly no justification whatever, and indeed it is a fundamental abridgement of a litigant's right to due process, under the Federal Constitution, to deny him access to a Federal Court, and relegate him to a non-judicial administrative body absolutely incapable of litigating his claims or granting him any relief or redress from the wrong being perpetrated upon him, by the process of ignoring the clear law of the State of Michigan.

(iii) Certiorari should be granted to remove the confusion among the Circuits upon the applicability and the limitation of section 2283 of Title 28 U. S. C. to Civil Rights Cases. The section reads:

> "A Court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where in aid of its jurisdiction."

In the within cause, the Sixth Circuit held the cases of

National Quarries Co. v. Detroit T & I R. Co., C. A. 6, 10 F. 2d 139, and

Baber v. Texas Utilities Co., C. A. 5, 228 F. 2d 665,

as authority for dismissing petitioners' complaint.

Neither of these cases was applicable. The *National Quarries* case arose by reason of diversity of Citizenship, and both it, and the *Baber* case sought injunctive relief against pending condemnation proceedings in fully competent State Courts whose decisions were subject to review upon Constitutional Questions all the way to the United States Supreme Court.

Not only should certiorari be granted to eliminate the possible confusion which cannot but help result from the Court's use of these decisions to dismiss a Civil Rights Case, but, insofar as Michigan Condemnation tribunals are not "courts" in the sense contemplated by Section 2283 of Title 28 U. S. C., certiorari should be granted to define the limits of applicability of the Section in Michigan, and to declare also whether the Civil Rights Statutes move such cases outside of the rule of Section 2283, Title 28 U. S. C.

If certiorari is denied now, future proceedings filed in behalf of many or most of the 300 litigants involved, whenever interference with their property is had, will result in unnecessary appeals, involving the same issues herein set forth, and it undoubtedly will be that Federal injunctions against the institution of proceedings to condemn the lands will be before the Federal Courts.

Petitioners believe that the United States Supreme Court should review this case, and instruct all of the Courts of the Sixth Judicial Circuit that the institution of condemnation proceedings in Michigan, the same not

being judicial proceedings, cannot act to cut off or preclude inquiry by the Federal Courts into the jurisdictional basis for the conduct of such proceedings, by the property owners affected.

Because of the importance of the question to the proper administration of law and the possibility of a multiplicity of suits in the Federal Courts upon the same questions herein presented, it is believed Certiorari should be granted.

(iv) The Writ of Certiorari should be granted because, in addition to the above reasons, the decision of the Sixth Circuit Court of Appeals conflicts with that of *Burt v. City of New York*, C. A. 2, June 26, 1946, 156 F. 2d 791, and *Baldwin v. Morgan*, C. A. 251 F. 2d 780, as to the Court's right to dismiss a bill filed under the Federal Civil Rights Acts, which meets the language of the jurisdictional Statute found at Title 28 U. S. C., Section 1343. (See Appendix A.)

Citing *Picking v. Pa. R. Co.*, 3 Cir., 151 F. 2d 240, Justice Hand said that the Civil Rights Acts actually toll the privilege of a District Court Judge to dismiss a case filed under Section 1343 of Title 28 U. S. C. He observed further:

> "The only protection at present is in the difficulty of proving such cases, which is great, but, so far as we can see, *any public officer of a State or of the United States, will have to defend any action brought in the District Court under Section 41(14) of Title 28 U. S. C. A. in which the Plaintiff, however irresponsible, is willing to make the necessary allegations.*" (P. 793 of Opinion; italics added.)

In the *Baldwin* case, on p. 791 of the opinion, the Court said:

"The plaintiffs are here then seeking protection of the rights secured to them both by the Federal Constitution and the Acts of Congress.

* * * This is within the reach of the Statute and the Statute as to such right is within the Constitution, *If these facts bring into play this Statute, the Plaintiffs are not to be deprived of their right of attempting to prove the deprivation* * * * if the gist of the action may be treated as one for the deprivation of such rights * * * the Court should apply the appropriate Civil Rights Statutes * * *" (Italics added).

In footnote No. 4, on p. 785 of *Baldwin v. Morgan, supra,* the Court stated:

"A motion to dismiss should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim. *Des Isles v. Evans,* 5 cir. 200 F. 2d 614, 615; *Miller v. Godshoux Sugars,* 5 cir. 241 F. 2d 264, 265."

In the opinion filed by the Court, the following language is found (p. 51a of Appendix 'A'):

"The named defendants are attempting to deprive the plaintiffs of their property in violation of Constitutional rights by proceeding to take the necessary steps to effect the Urban Renewal Plan.* * *

The property owners (or lessees) on whose behalf plaintiffs speak are professional, commercial, and residential persons. It appears that plaintiff's claim that the steps taken thus far toward the ultimate realization of the plan have been fraught with fraud, sham and deception. These are serious charges, and, if true warrant full disclosure * * *."

The Court further stated:

"Plaintiffs say that the guise under which the plan is being propelled forward is by the false picturing of a

'blighted' or 'slum' area in need of rehabilitation. Plaintiffs contend that such a picture is contrary to the facts."

Having cited the above, and well stated a case, under the Civil Rights Act, the Court nonetheless dismissed the Plaintiffs' case on the ground of lack of jurisdiction.

In the exhaustive analysis of Civil Rights Cases within the Federal Courts as found in 2 R. R. L. R. 269 (1957) no case is found in harmony with the ruling made in the instant case, and Certiorari ought to be granted to clarify the confusion in an area of great public concern and importance.

No single body of the law could be more important today than that having to do with the Civil Rights Jurisdiction of the Federal Courts and any construction of these Sections cannot but have profound influence for the Federal Judiciary as a whole, and the whole people of these United States.

CONCLUSION.

For the foregoing reasons we respectfully submit that this petition for a writ of certiorari should be granted.

Respectfully submitted,

MILTON R. HENRY,
84 Auburn Ave.,
Pontiac, Michigan,
Attorney for Petitioners.

APPENDIX A.

STATUTORY PROVISIONS CITED AND QUOTED.

28 U. S. C., Section 1331, June 25, 1948, c. 646, 62 Stat. 930:

The District Courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000.00 exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

28 U. S. C., Section 1343, June 25, 1948, c. 646, 62 Stat. 932:

The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42;

(3) To redress the deprivation, under color of any State law, Statute, ordinance, regulation custom or usage, of any right privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; (Gaines § 41(14) Title 28 U. S. C.)

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of Civil rights, including the right to vote.

Title 42 U. S. C., Section 1451(c) Housing Law of 1949, as amended Sept. 23, 1959, Pub. L. 86-372, Title I, Section 110 (a)(3), (4), Title IV, Section 401, 17(2), 73 Stat. 659, 670, 677:

No contract shall be entered into for any loan or capital grant under this subchapter, or for annual contributions or capital grants pursuant to the United States Housing Act of 1937, as amended, for any project or projects not constructed. * * * unless (1) there is presented to the Administrator by the locality a workable program (which shall include an official plan of action, as it exists from time to time, for effectively dealing with the problem of *urban slums and blight* within the community and for the establishment and preservation of a well planned community with well-organized residential neighborhoods of decent homes and suitable living environment for adequate family life) for utilizing appropriate private and public resources *to eliminate,* and prevent the development or spread of, *slums and urban blight,* to encourage needed urban rehabilitation to provide for the redevelopment *of blighted, deteriorated, or slum areas,* or to undertake such of the aforesaid or other feasible community activities as may be suitably employed to achieve the objectives of such a program. * * *

Title 42 U. S. C., Section 1452(a), United States Housing Law of 1949, as amended, Sept. 23, 1959, Pub. L. 86-372, Title IV, Sections 402-404, 73 Stat. 671:

To assist local communities *in the elimination of slums and blighted or deteriorated or deteriorating areas, in preventing the spread of slums, blight, or deterioration,* and in providing maximum opportunity for the redevelopment, rehabilitation, and conservation of such areas by private enterprise, the Administrator may make temporary

and definitive loans to local public agencies in accordance with the provisions of this subchapter for the undertaking of urban renewal projects. * * *

Provided * * *, That the loan contract shall provide that the local public agency shall not dispose of such real property * * * until the local governing body of the locality shall have either approved the urban renewal plan for the project or consented to the disposal of such real property. * * *

Title 42 U. S. C., Section 1460(a) (c), June 30, 1949, c. 288, Title I, Section 103, 63 Stat. 380; Aug. 7, 1956, c. 1029, Title III, Sections 302 (a) (2), (b), (c), (d), 70 Stat. 1097.

(a) "Urban Renewal Area" means a *slum area or a blighted,* deteriorated, or deteriorating area in the locality involved which the administrator approves as appropriate for an urban renewal project.

(c) "Urban Renewal Project" or "project" may include undertakings and activities of a local public agency in an urban renewal area for *the elimination* and for the prevention of the development or spread of *slums and blight,* and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof, in accordance with such urban renewal plan.

Title 42 U. S. C., Section 1455, same citation as above:

Contracts for loans or capital grants shall be made only with a duly authorized local public agency and shall require that:

(c) There be a feasible method for the temporary relocation of families displaced from the urban renewal area

or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents and prices within the financial means of the families displaced from the urban renewal area, decent, safe and sanitary dwellings equal in number to the number of and available to such displaced families and reasonably accessible to their places of employment.

(d) No land for any project to be assisted under this subchapter shall be acquired by the local public agency except after public hearing following notice of the date, time, place and purpose of such hearing.

Title 42 U. S. C., Section 1452(d):

No contract for advances for the preparation of a General Neighborhood Renewal Plan may be made unless the administrator has determined that:

(1) in the interest of sound community planning, it is desirable that the urban renewal area be planned for urban renewal purposes in its entirety;

(3) the governing body of the locality has by resolution or ordinance (i) approved the undertaking of the General Neighborhood Renewal plan and the submission of an application for such advance and (ii) represented that such plan will be used to the fullest extent feasible as a guide for the provision of public improvements in such area and that the plan will be considered in formulating codes and other regulatory measures affecting property in the area and in undertaking other local governmental activities pertaining to the development, redevelopment, rehabilitation, and conservation of the area. * * * As used herein, a General Neighborhood Renewal Plan, * * * which outlines the urban renewal activities proposed for the area involved, provides a framework for the prepa-

ration of urban renewal plans and indicates generally, to the extent feasible in preliminary planning, the land uses, population density, building coverage, prospective requirements for *rehabilitation* and improvement of property, and any portions of the area contemplated for clearance and redevelopment.

Title 42, Section 1981, R. S., Section 1977:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Title 42, Section 1982, R. S., Section 1978:

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Title 42, Section 1983, R. S., Section 1979:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Title 42, Section 1985, R. S., Section 1980:

(B) If two or more persons in any State or territory conspire * * * for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Amendment XIV to the Constitution of the United States, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment V to the Constitution of the United States:

No person shall be * * * deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX B.

OPINION AND JUDGMENT BELOW.

Opinion of Hon. Thomas P. Thornton, United States District Judge, rendered, June 2, 1960.

The matter before the Court is a motion to dismiss the complaint herein. The complaint purports to be filed by plaintiff as a class action and is filed on behalf of plaintiff and of the class by two attorneys. We will hereafter refer to the plaintiff as "plaintiffs." The relief sought is "immediate and permanent injunctive relief against each of the above named persons." Said persons number approximately 30 and include the Mayor of the City of Detroit, the members of the Detroit Common Council, the members of the Detroit Planning Commission, the administrative officials of said Commission, members of the Detroit Housing Commission, and the Committee Clerk for the Common Council for the City of Detroit. The document consists of 33 numbered paragraphs including subsections within a number of them. It consists of 11 pages of single-spaced typing. All but the introductory and closing paragraphs are presumably the reasons advanced by plaintiffs why the equitable relief of injunctive process should issue out of this court. This pleading does fantastic violence to Rule 8 F. R. C. P. In the interest of expediency, however, the Court will consider the merits of the motion as addressed to the complaint, the Court having had the benefit of oral argument in open court by counsel representing plaintiffs and the moving parties, respectively.

As best as we can glean the crux of the complaint, we conclude that defendants are attempting to embark upon a development or improvement project which would affect a certain area in this city (Detroit) described as the Eight Mile-Wyoming Neighborhood. Our estimate of the area,

after consulting the official Detroit city map, is that it is approximately a half mile by a mile, of rectangular shape, or 3 long city blocks by 16 short ones. The named defendants are allegedly attempting to deprive plaintiffs of their property in violation of their constitutional rights by proceeding to take the necessary steps to effectuate the Urban Renewal Plan, Mich. R-19, also referred to as the Eight Mile-Wyoming Neighborhood Development Plan. The property owners (or lessees) on whose behalf plaintiffs speak are professional, commercial and residential persons. It appears that plaintiffs claim that the steps taken thus far toward the ultimate realization of the Plan have been fraught with fraud, sham and deception. These are serious charges and, if true, warrant full disclosure. We do not here express any opinion whatsoever regarding the merit of these allegations. Plaintiffs say that the guise under which the plan is being propelled forward is by the false picturing of a "blighted" or "slum" area in need of rehabilitation. Plaintiffs contend that such a picture is contrary to the facts. Again, we express no opinion on any factual matter here presented by this complaint or by this motion to dismiss. We have no desire but to see all persons accorded their constitutional rights and, as a duly constituted federal court, it is our duty to be the judicial instrument of enforcement of such rights to the extent such duty belongs within the designated sphere of our judicial function. The concept to which we refer is, of course, that of jurisdiction.

Any action on our part toward a determination of the merits of this controversy would be of no value whatsoever if this Court be without jurisdiction. It appears to us the Court is, in fact, without jurisdiction in this matter and that, therefore, the motion to dismiss is well grounded. See the following cases which, taken together, state in the aggregate a totality of the reasoning which has persuaded

this Court in reaching the conclusion here. *National Quarries Co. v. Detroit, T. & I. R. Co.*, 10 F. 2d 139, (6 Cir.) is clearly authority for the proposition that all the issues here present are available to these plaintiffs in the state court proceeding which must necessarily be followed before any of the instant property can be taken. That case also stands for the proposition that state courts will guarantee federal constitutional rights as assiduously as will federal courts. We might state here, parenthetically, that this suit is prematurely brought as the property cannot be taken other than through the condemnation procedures of the state of Michigan which provide for the presenting of all defenses. *Baber v. Texas Utilities Company*, 228 F. 2d 665 (5 Cir.) also contains the answer to plaintiffs' contention that projected condemnation proceedings will be violative of the constitutional rights of plaintiffs. It is there clearly stated that plaintiffs are not without their remedies. The case of *Burt v. City of New York*, 156 F. 2d 791 (2 Cir.) cited to the Court by plaintiff is obviously inapplicable to the situation here in that a very different set of facts is there presented.

An order in conformance with this opinion may be presented.

BY: /s/ THOMAS P. THORNTON

United States District Judge

Dated at Detroit, Michigan, this 2nd day of June, A. D. 1960.

Order of the United States Court of Appeals For the Sixth Circuit, Filed Feb. 17, 1961.

BEFORE: MCALLISTER, *Chief Judge*, WEICK and O'SULLIVAN, *Circuit Judges*.

The above cause coming on to be heard upon the record, the briefs of the parties, and the argument in open court of counsel for appellees, and the court being duly advised,

Now, therefore, it is ordered, adjudged and decreed that the judgment of the District Court be and is hereby affirmed on the opinion of Judge Thornton.

Approved for entry:

/s/ THOMAS F. MCALLISTER,

United States Circuit Judge.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 975

CARVER PROGRESS CLUB,
a Michigan Non-Profit Corporation, individually and for all its members as a class,
Petitioner,
vs.
LOUIS C. MIRIANI,
Mayor of the City of Detroit, et al.,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTER-STATEMENT OF THE CASE

We believe that the following corrections and additions to Petitioner's Statement of the Case are necessary.

In the first paragraph on page 6 of the Petition, the statement that 4,000 negroes lived in the area in approximately 1,200 medium cost structures is misleading and inconsistent with the allegations in paragraph eight of the Complaint (Certified Record 6a), in which it is alleged that the real property affected by the case contains approxi-

mately 300 parcels of improved realty, of which approximately 85% are populated by negroes.

In the fourth paragraph on page 6 of the Petition, Petitioner infers that all property owned by negroes in the area is to be acquired by the City. This is not true. Petitioner has not attached a copy of the Development Plan to its Complaint nor does the Complaint indicate what properties are to be taken and what properties are to remain, nor does the complaint designate the full nature and extent of the public improvements to be made in the area.

In the first paragraph on page 9 of the Petition, Petitioner states that the District Court cut off Petitioner's argument on the applicable law. This statement is not true. The District Court gave Petitioner ample time to furnish the Court any arguments it might have. (Certified Record 47a, 48a, 53a.)

In the third paragraph on page 9 of the Petition, Petitioner infers that its attorney, Milton R. Henry, was denied an opportunity to appear and argue in the Circuit Court of Appeals. Attorney for petitioner did not appear and make an oral argument (Petition 30). The Certified Record gives no reason for his non-appearance and discloses no motion for an adjournment of the hearing.

COUNTER-STATEMENT OF CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to the Constitutional and Statutory provisions set forth on page 5 of the Petition, the following are involved.

Article XIII, Section 1 of the Constitution of the State of Michigan

Article XIII, Section 2 of the Constitution of the State of Michigan

Act 344 of the Public Acts of the State of Michigan of 1945, as amended, C.L. 1948, §125.71 *et seq.*, as amended, M.S.A. §5.3501, *et seq.*, as amended

Section 1, M.S.A. §5.3501
Section 2, M.S.A. §5.3502
Section 3, M.S.A. §5.3503
Section 4, M.S.A. §5.3504
Section 5, M.S.A. §5.3505

Act 124 of the Public Acts of the State of Michigan of 1883, as amended, C.L. 1948, §213.71 *et seq.*, as amended, M.S.A. §8.41 *et seq.*, as amended

Section 1, M.S.A. §8.41
Section 2, M.S.A. §8.44
Section 6, M.S.A. §8.48
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Section 13, M.S.A. §8.55
Section 14, M.S.A. §8.56
Section 15, M.S.A. §8.57

The pertinent text of the above Constitutional and Statutory provisions are set forth in the Appendix.

REASONS FOR DENYING THE WRIT

1. THERE IS NO CONFLICT IN THE ORDER OF THE SIXTH CIRCUIT COURT OF APPEALS AFFIRMING THE JUDGMENT OF THE DISTRICT COURT WITH OTHER COURTS OF APPEAL OR WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT.

While Petitioner, a Michigan corporation, complains in detail about the eligibility of the area for a rehabilitation project, the method of adopting the Development Plan and various features of the Development Plan, it fails to allege sufficient facts tending to show that the respondents were making any intentional or purposeful discrimination between persons or classes.

In *Snowden v. Hughes,* 321 U. S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1943), this Court held in part in an action for damages under old Title 8 U. S. Code, §§41, 43 and 47(3) (now §§1981, 1983 and 1985(3), Title 42 U. S. Code Annotated), at page 7 of 321 U. S., at page 400, of 64 S. Ct.:

> "There is no allegation of any facts tending to show that in refusing to certify petitioner as a nominee, the Board was making any *intentional or purposeful discrimation* between persons or classes • • •."

And at page 8 of 321 U. S., at page 401 of 64 S. Ct.:

> "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional or purposeful* discrimination • • •". (Emphasis added.)

In the case of *Burt v. City of New York*, 156 F. 2d 791, C.A. 2 (1946), in its opinion at page 791, the Court stated in part as follows:

> "In the seventh article of his amended complaint he has specified eight instances, in seven of which the defendants have in this way singled him out for unlawful oppression. These allegations go further than merely to assert that the plaintiff has been the victim of deliberate abuse of power by state officials, which would not be enough. They assert that he is the victim of a '*purposeful discrimination*'; being, if not the only artchitect so practised upon, at least one, who has suffered what others have in general escaped." (Emphasis added.)

In the case of *Baldwin v. Morgan*, 251 F. 2d 780, C.A. 5 (1958) in its opinion at page 784, the Court stated in part as follows:

> "The complaint next sets forth the status of the Terminal Company. Then, in a similar way, both affirmatively and negatively, it charges discriminatory compulsory segregation by the Terminal in the waiting rooms."

In affirming the judgment of the District Court, which held that the case of *Burt v. City of New York, supra*, is obviously inapplicable to the situation here in that a very different set of facts is there present (Petition 29) the Sixth Circuit Court of Appeals was not being inconsistent with the cases above cited.

2. THERE IS NO CONFLICT BETWEEN THE ORDER OF THE SIXTH CIRCUIT COURT OF APPEALS AND THE DECISIONS OF THE SUPREME COURT OF THE STATE OF MICHIGAN IN THE CONSTRUCTION OF THE CONSTITUTION AND LAWS OF THE STATE OF MICHIGAN RELATING TO THE CONDEMNATION OF PRIVATE PROPERTY FOR PUBLIC USE.

The Development Plan, the carrying out of which plaintiff seeks to enjoin, was approved and adopted by the Common Council of the City of Detroit pursuant to Act 344 of the Public Acts of 1945, as amended, C. L. 1948, §125.71 *et seq.*, as amended, M.S.A. §5.3501, *et seq.* (10a, 15a, 16a). (Appendix 13, 14, 15, 16.)

Section 5 of Act 344 provides for the acquisition by municipalities of property through condemnation proceedings for the accomplishment of the purposes of this Act (Appendix 16).

Condemnation proceedings by municipalities in the State of Michigan are peculiar in that the Michigan Constitution requires that the question of necessity for the taking as well as the matter of just compensation must be determined by a jury of twelve (12) freeholders (Appendix 13).

Act 124 of the Public Acts of the State of Michigan of 1883, as amended, C.L. 1948 §213.71 *et seq.*, as amended, M.S.A. 8.41 *et seq.* provides for condemnation by cities, villages and counties in the State of Michigan of private property for the use and benefit of the public (Appendix 16, 17, 18, 19, 20, 21).

Section 2 of Act 124 confers jurisdiction in condemnation proceedings upon the Recorder's Court (Appendix 16, 17).

The Recorder's court of the City of Detroit was established by the Legislature of the State of Michigan by Act 326 of the Local Acts of 1883, C. L. 1948, §726.1 *et seq.*, as amended, M.S.A. §27.3551 *et seq.*, and this court was given supplementary powers by the Legislature under Act 369 of the Public Acts of 1919, C. L. 1948, §725.1 *et seq.*, as amended, M.S.A. §27.3941 *et seq:*

In the case of *In re White*, 340 Mich. 140 (1945) on page 148, 65 N. W. 296 on page 300, the Michigan Supreme Court held in part as follows:

> "Article 7, §1, Michigan Constitution of 1908, provides that the judicial power shall be vested in the courts therein enumerated 'and such other courts of civil and criminal jurisdiction, inferior to the Supreme Court, as the legislature may establish by general law.' When the legislature, by the enactment of C. L. 1948, §726.1 *et seq.* (Stat. Ann. §27.3551 *et seq.*), provided for the recorder's court of the city of Detroit, it acted in the exercise of that constitutionally conferred power to establish 'other courts.' Having acted thus, the court so created under constitutional authority and provisions, became a constitutional court of record, possessed of the inherent powers appertaining thereto, equally as in the case of the circuit and other courts enumerated in the Constitution. * * *"

Section 6 of Act 124, under which condemnation proceedings must be exercised by the City of Detroit provides for a jury of 12 freeholders (Appendix 17, 18).

Section 7 of Act 124 provides that the jury shall be instructed as to their duties and the law by the Judge of the Court (Appendix 18).

Section 8 of Act 124 provides that the jury shall determine in their verdict the necessity for the proposed im-

provement and for taking such private property for the use or benefit of the public for the proposed improvement (Appendix 18, 19).

Section 10 of Act 124 empowers the court to set aside the verdict of the jury and order a new trial as in civil suits at law in the circuit courts of the state, (Appendix 19), and Section 11 provides for a new trial (Appendix 19).

Sections 11, 12, 13, 14 and 15 of Act 124 provides for appeals to the Michigan Supreme Court (Appendix 19, 20, 21).

Questions involving the Development Plan and the method by which it was adopted may be raised in the Recorder's Court and are reviewable on appeal by the Michigan Supreme Court. *City of Allegan v. Vonasek,* 261 Mich. 16 (1932), on page 21, 245 N. W. 557, on page 559; *In re Civic Center-Salloum,* 335 Mich. 582 (1953) on pages 1 and 2, 56 N. W. 2nd 387, on pages 389, 390.

While the question of necessity in condemnation proceedings in Michigan is for the jury, the action of the jury in determining necessity is reviewable by the courts. In the case of *Grand Rapids Board of Education v. Baczewski,* 340 Mich. 265 (1954), on page 271, 65 N. W. 2nd 810, on pages 812, 813, the Michigan Supreme Court held in part as follows:

> "Appellee contends that the jury's determination of necessity is conclusive and a review of said determination by this Court would constitute an assumption of jurisdiction denied to the Court by the Constitution.
>
> "We do not agree with appellee's contention. Numerous decisions have established that the jury is the final determiner of both law and fact in condemnation proceedings. Another important prin-

> ciple however was established *In re Owen and Memorial Parks in City of Detroit*, 244 Mich. 377 (61 A. L. R. 190), and in *In re Parkside Housing Project*, 290 Mich. 582, namely: that this Court has the right and duty to reverse a jury's determination in condemnation proceedings where the jury has proceeded on a wrong theory or basis to determine the question of necessity or damage and where 'the errors complained of are such as may fairly be said to have a controlling influence in securing the result.'"

In reviewing on appeal condemnation proceedings instituted by the City of Detroit in the Recorder's Court, the Supreme Court of Michigan has the power, and has exercised the power, to decide questions affecting both the State Constitution and the Federal Constitution. *In re Brewster Street Housing Site*, 291 Mich. 313 (1939), on pages 331 to 343, 289 N. W. 493, on pages 499 to 504; *In re Jeffries Housing Project*, 306 Mich. 638 (1943) on pages 646 and 647, 11 N. W. (2nd) 272 on pages 274, 275.

In the case of *National Quarries Co. v. Detroit, T & I. R. Co.*, 10 F. (2d) 139 (1926), the Sixth Circuit Court of Appeals was not being inconsistent with the Michigan Supreme Court when in its opinion at page 139 the Court stated in part as follows:

> "If it be conceded that the elements of federal jurisdiction exist, as likewise the power to grant the relief sought, nevertheless there is a question preliminary to those argued by plaintiff which we think is decisive of the case. It arises on the inquiry as to whether the bill shows facts justifying equitable intervention. We think it does not. Among the reasons for this view is the fact that every question arising under the state Constitution that is made here can be made and determined in the

> proceeding in the state court, and similarly the federal questions may be presented there, with the right of ultimate determination by the Supreme Court of the United States."

and further stated on page 140:

> "What has been said as to the absence of equity in the bill with respect to enjoining the proceeding because in violation of the Constitution of the state applies with equal force to the claim that the taking would be in violation of the federal Constitution, since it is not to be anticipated that the state courts will render any judgment in violation of the plaintiff's federal rights."

See also *Baber v. Texas Utility Company*, 228 F. 2d 665, C.A. 5 (1956).

Petitioner is attempting to invoke without a sufficient complaint, the Civil Rights Act for the purpose of circumventing the laws of the State of Michigan, particularly the requirement of the Michigan Constitution that the question of necessity in municipal condemnation proceedings must be determined by a jury of freeholders.

The accepted principles governing equitable and declaratory relief apply with equal force where relief is sought under the Civil Rights Act.

In the case of *Williams v. Dalton*, 231 F. 2d 646, C.A. 6 (1956), the Court in its opinion at page 648, stated in part as follows:

> "This was not an application for a writ of habeas corpus, however, but an action under the Civil Rights Act. That statute provides for 'an action at law, suit in equity, or other proper proceedings for redress.' 42 U. S. C. A. §1983. The district

courts are given express jurisdiction over such actions by 28 U. S. C. A. §1343. It is well settled, however, that accepted principles governing equitable and declaratory relief are no less applicable where such relief is sought under the Civil Rights Act. *Giles v. Harris*, 1903, 189 U. S. 475, 486, 23 S. Ct. 639, 47 L. Ed. 909; *Douglas v. City of Jeannette*, 1943, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324. Federal Courts have been chary of granting declaratory or equitable relief in an area of possible friction between federal and state jurisdictions. See, for example, *Public Service Commission v. Wycoff Co.*, 1952, 344 U. S. 237, 73 S. Ct. 236, 97 L. Ed. 291; *Railroad Commission of Texas v. Pullman Co.*, 1951, 312 U. S. 496, 61 S. Ct. 643, 85 L. Ed. 971; *Stefanelli v. Minard*, 1951, 342 U. S. 117, 72 S. Ct. 118, 96 L. Ed. 138."

In the final paragraph of its argument for granting the Writ (Petition 20), petitioner stresses the importance of the Supreme Court construing the sections of the Civil Rights Act involved in this case because of the profound influence it will have on the Federal Judiciary, as a whole, and the whole people of these United States. This argument is inconsistent with the attitude of petitioner in the Circuit Court of Appeals where the attorney for petitioner did not appear and present an oral argument when the case came on for hearing (Petition 30).

CONCLUSION

For the foregoing reasons, Respondents pray that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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Dated: June 12, 1961.

APPENDIX

Article XIII, Section 1 of the Constitution of the State of Michigan:

> "Private property shall not be taken by the public nor by any corporation for public use, without the necessity therefor being first determined and just compensation therefor being first made or secured in such manner as shall be prescribed by law."

Article XIII, Section 2 of the Constitution of the State of Michigan:

> "When private property is taken for the use or benefit of the public, *the necessity for using such property and the just compensation to be made therefor, except when to be made by the state, shall be ascertained by a jury of twelve freeholders* residing in the vicinity of such property, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law: Provided, That the foregoing provision shall not be construed to apply to the action of commissioners of highways or road commissioners in the official discharge of their duties." (Emphasis added.)

Act 344 of the Public Acts of the State of Michigan of 1945, as amended, C.L. 1948, §125.71 *et seq.*, as amended, M.S.A. §5.3501, *et seq.* as amended.

Section 1, M.S.A. §5.3501:

> "It is hereby found and declared that large areas in the municipalities of the state have become blighted, with the consequent impairment of tax-

able values upon which, in large part, municipal revenues depend; that such blighted areas are detrimental or inimical to the health, safety, morals, and general welfare of the citizens, and to the economic welfare of the municipality; that in order to improve and maintain the general character of the municipality, *it is necessary to rehabilitate such blighted areas;* that the conditions found in blighted areas can not be remedied by the ordinary operations of private enterprise, with due regard to the general welfare of the public, without public participation in the planning, property, acquisition, disposition and financing thereof; that the purposes of this art are to rehabilitate such areas by acquiring and developing properties within such areas for the protection of the health, safety, morals and general welfare of the municipality, to preserve existing values of other properties within or adjacent to such areas, and to preserve the taxable value of the property within such areas; *and the necessity in the public interest for provisions herein enacted is hereby declared as a matter of legislative determination to be a public purpose and a public use.*" (Emphasis added.)

Section 2, M.S.A. §5.3502:

"* * * 'Blighted area' shall be a portion of a municipality, developed or undeveloped, improved or unimproved, characterized by obsolescence, physical deterioration of structures therein, improper division or arrangement of lots and ownerships and streets and other open spaces, mixed character and uses of the structures, or any other similar characteristics which endanger the health, safety, morals, or general welfare of the municipality, and which may include any buildings or improvements not in themselves obsolescent, and any real property, residential or non-residential, whether improved or unimproved, the acquisition of which is deemed necessary for rehabilitation of the area. * * *"

Section 3, M.S.A. §5.3503:

> "Any municipality is hereby granted the power to bring about the rehabilitation of blighted areas and the prevention, reduction or elimination of blight, blighting factors or causes of blight, *and for that purpose to acquire real property by purchase, gift, exchange or condemnation,* and to lease, sell or exchange such real property in accordance with the provisions of this act." (Emphasis added.)

Section 4, M.S.A. §5.3504:

> "*The following plans, statements and actions are hereby made requisite for and conditions of the exercise of the powers herein granted for the acquisition, sale or lease of real property for the carrying out of a development plan in a development area.*
> • • •
>
> "(c) A development plan, adopted by the local legislative body, after public hearing thereon as hereinafter provided of the development area in which the land proposed to be acquired is located or for the effectuation or protection of which development the proposed land acquisition is deemed necessary. Such plan shall designate the location and extent of streets and other public facilities within the area and shall designate the location, character and extent of the categories of public and private land uses proposed for and within the area, such as residential, recreation, business, industry, schools, open spaces and others, and shall also include a feasible method for the relocation of families who will be displaced from the area in decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families, and such other general features of the proposed rehabilitation as may be determined by the local legislative body." (Emphasis added.)

Section 5, M.S.A. §5.3505:

> "For the accomplishment of the purposes of this act, the municapility shall acquire fee simple title in real property by purchase, gift, exchange, condemnation or otherwise, and shall apply such real property thereafter to the expressed purposes of this act.
>
> "*The local legislative body may institute and prosecute proceedings under the power of eminent domain in accordance with the laws of the state or provisions of any local charter relative to condemnation.* The purposes contemplated by this act are hereby declared to be public purposes within the meaning of the constitution, state laws and charters relative to the power of eminent domain. No resident owner in a development area may be dispossessed after condemnation under the provisions of this act until other adequate housing accommodations are available, to the people displaced." (Emphasis added.)

Act 124 of the Public Acts of the State of Michigan of 1883, as amended, C.L. 1948, §213.71 *et seq.*, as amended, M.S.A. §8.41 *et seq.* as amended.

Section 1, M.S.A. §8.41:

> "That the common council of any city, or the board of trustees of any village, or the board of county road commissioners, or the board of supervisors of any county in this state, is hereby authorized to take private property for the use or benefit of the public, within the limitation of the state constitution and to institute and prosecute proceedings for that purpose. * * *"

Section 2, M.S.A. §8.44:

> "Such proceedings may be commenced and prosecuted under this act, whenever the common coun-

cil, board of trustees, board of supervisors or board of county road commissioners shall have declared a public improvement to be necessary in the municipality or county, and shall declare that they deem it necessary to take private property, describing it, for such public improvement, designating it, and that improvement is for the use or benefit of the public. They shall, by resolution direct the city or village attorney, or the prosecuting attorney of the county, or the person acting as attorney for the said board of county road commissioners to institute the necessary proceedings in behalf of the municipality or county in the proper court, to carry out the object of the resolution in regard to taking private property by the city, village or county. *Jurisdiction is hereby conferred upon the circuit court for the county in all cases brought under this act: Provided, That in cities having a recorder's court, the proceedings shall be instituted and prosecuted in that court,* and in cities having a superior court and no recorder's court such proceedings shall be instituted and prosecuted in such superior court, unless otherwise ordered by the board of supervisors, in matters pertaining exclusively to the interests of the county." (Emphasis added.)

Section 6, M.S.A. §8.48:

"On the return day of the summons, or on some subsequent day to which the proceedings shall have been adjourned, if no sufficient cause to the contrary has been shown, the court shall make an order that a jury be impaneled in the cause. *Such jury shall be composed of twelve (12) freeholders* from the municapility, but in cases instituted by cities and villages, such freeholders, or any of them, may be drawn from the county if it shall be made to appear to the court that a disinterested panel cannot be drawn from such freeholders, and the court shall

so order, and shall be selected and impaneled as follows. * * *" (Emphasis added.)

Section 7, M.S.A. §8.49:

"The jurors so impaneled shall be sworn or shall affirm in substance as follows: 'You do solemnly swear (or affirm) that *you will well and truly ascertain and determine whether there is a public necessity for making the proposed improvement, and for taking for the use or benefit of the public the private property which the petition described and prays may be taken, and if you shall determine that it is necessary to make such improvement and to take said property, that then you ascertain, determine and award the just compensation to be made therefor,* and faithfully and impartially discharge all other duties as devolve upon you in this case, and unless discharged by the court a true verdict give according to law and the evidence, so help you God, (or under the pains and penalties of perjury).' The jury shall hear the proofs and allegations of the parties, and if so ordered by the court shall go to the place of the intended improvement, in the charge of an officer, and upon or as near as practicible to any property proposed to be taken and examine the premises. *They shall be instructed as to their duties and the law of the case by the judge of the court* and shall retire under the charge of an officer *and render their verdict in the same manner as on the trial of an ordinary civil case,* but the same shall be in writing and be signed by the foreman or by all the jurors." (Emphasis added.)

Section 8, M.S.A. §8.50:

"The jury shall determine in their verdict *the necessity* for the proposed improvement and for taking such private property for the use or benefit

of the public for the proposed improvement and in case they find such necessity exists they *shall award* to the owners of such property and others interested therein such compensation therefor as they shall deem just. * * *" (Emphasis added.)

Section 10, M.S.A. §8.52:

"*The verdict of the jury may be set aside by the court and a new trial ordered as in civil suits at law in the circuit courts of this state.* * * *" (Emphasis added.)

Section 11, M.S.A. §8.53:

"*Motions for a new trial or to arrest the proceedings shall be made within two (2) days after the rendition of the verdict, unless further time is allowed by the court; and if no such motion is made, or being made is overruled, the court shall enter an order or judgment confirming the verdict of the jury; and such judgment of confirmation, unless reversed by the supreme Court, shall be final and conclusive as to all persons interested therein.*" (Emphasis added.)

Section 12, M.S.A. §8.54:

"Any person whose property may be taken, considering himself aggrieved, *may appeal from the judgment of the court confirming the verdict of the jury* by filing in writing with the clerk of said court a notice of such appeal within five (5) days after the confirmation and within the same time serving a copy thereof on the city or village attorney, or prosecuting attorney of the county and filing a bond in said court, to be approved by the judge thereof, conditioned for the prosecution of said appeal to judgment and the payment of all costs, damages, and expenses that may be awarded against him, in

case the judgment of confirmation shall be affirmed. *Such appeal shall be perfected within the same time and prosecuted as an appeal in chancery,* as near as may be, subject to the provisions of this act." (Emphasis added.)

Section 13, M.S.A. §8.55:

"In case of such appeal the clerk of the court, on payment of his legal fees and charges, *shall transmit to the supreme court a certified copy of the necessary files, records, and proceedings in the case; and the judge of the court shall, at the request of the appellant, settle a case according to the usual practice of said court, showing the material evidence and instructions given to the jury bearing upon any disputed points to which exception was taken, and the objections, rulings, and exceptions in the case, all of which shall be returned by said clerk as part of the records, to the clerk of the supreme court.*" (Emphasis added.)

Section 14, M.S.A. §8.56:

"*The said appeal may be brought on for a hearing at any term of the supreme court, and said court may affirm, or for any substantial error reverse the judgment, and may grant a new trial.* The said court shall allow the prevailing party his reasonable costs and expenses to be taxed, and give judgment as in other chancery appeals, and all costs, damages and expenses awarded to the city, village, or county, if it so elect, may be applied on or deducted from the compensation, if any, to be paid, or execution may issue on the judgment. Damages may be awarded against a party appealing without reasonable cause." (Emphasis added.)

Section 15, M.S.A. §8.57:

> "*When the verdict of the jury shall have been finally confirmed by the court, and the time in which to take an appeal has expired, or, if an appeal is taken, on the filing in the court below of a certified copy of the order of the supreme court, affirming the judgment of confirmation,* it shall be the duty of the clerk of the court to transmit to the common council, board of trustees, or board of county road commissioners or board of supervisors, a certified copy of the verdict of the jury, and of the judgment of confirmation, and of the judgment, if any, of affirmance; and thereupon, the proper and necessary proceedings, in due course, shall be taken for the collection of the sum or sums awarded by the jury. * * *" (Emphasis added.)